

THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION NO.6402 OF 2003.

DATED: 17-08-2005.

Between

Md.Sahib Baksh son of Mohd.Khasim Saheb
57 yrs, Superintendent, Board of Intermediate
Education, Nampally, Hyderabad. A.P.

...Petitioner

And

1.The Commisioner and Secretary,
Board of Intermediate Education,
Nampally, Hyderabad. A.P. and 2 others.

....Respondents

ORDER

This writ petition is filed to direct the 1st respondent to post the petitioner as Deputy Secretary in Hyderabad in the existing vacancy modifying the orders of transfer of the petitioner to Kadapa in Proc.Rc.No.935/A-A1/99, dated 26-03-2003 of the 1st respondent, to direct the respondents 1 and 2 to promote the petitioner as Deputy Secretary with retrospective effect from the date his junior was promoted i.e., on 02-04-2002 as Deputy Secretary with all consequential benefits of seniority pay and other benefits and to release the increments due to the petitioner from 01-12-1999,

01-12-2000, 01-12-2001 and 01-12-2002 with fixation of pay in the P.R.C. scales in view of the judgment in W.P.No.23322/2001, dated 04-03-2003.

The case of the petitioner is that he was appointed as Junior Assistant in the office of the Board of Intermediate Education in the year 1971. Thereafter he was promoted as Senior Assistant on 01-01-1974 and further promoted as Superintendent on 22-12-1980 and since then he has been working as such. He is fully qualified for promotion as Deputy Secretary from the year 1985 onwards. On 06-05-1988 he was transferred to Karimnagar. Due to ill-health, he applied for leave from 13-05-1998 to 31-08-1998 and reported for duty on 01-09-1998 by submitting the Medical certificate issued by NIMS. But the 1st respondent with a mala fide intention initiated disciplinary proceedings against him on the ground that he was absent from duty unauthorisedly during the above period. In spite of his explanation, the 1st respondent imposed punishment of stoppage of two increments with cumulative effect vide proceedings in Rc.No.543/A-2/A3/98, dated 02-02-2000 and stoppage of one increment with cumulative effect vide proceedings in Rc.No.543/B/A2/98, dated 06-06-2000. Aggrieved thereby, he preferred an appeal before the 2nd respondent which was rejected vide proceedings in Rc.No.543/A2/A3/98, dated 05-10-2001. Thereafter, he filed W.P.No.23322 of 2001 before this Court which was disposed of on 04-03-2003 setting aside the orders of the respondents 1 and 2. He submitted representations to the 1st respondent on 12-03-2003, 27-03-2003 and 31-03-2003 for grant of the above reliefs. Later on, the 1st respondent vide proceedings in Rc.No.935/A-A1/99, dated 26-03-2003 promoted him along with six others in newly created posts without considering his case for retrospective promotion as Deputy Secretary from 02-04-2002, when his junior was promoted. In spite of his representation, no reply was received from the authorities. In the senior list his name stood at S.No.12 and the name of the 3rd respondent stood at S.No.13. Further his services were regularized in the cadre of Superintendent placing him at S.No.7 and placing the 3rd respondent at S.No.8 below his name. Therefore, the 3rd respondent is junior to him. There are no adverse reports against him. Since the penalty of stoppage of increments was set aside by the Hon'ble High Court, he is entitled to retrospective promotion as Deputy Secretary with effect from

02-04-2002 with all consequential benefits of seniority, pay and allowances.

The 1st respondent filed counter affidavit denying the averments of the petition while admitting the stoppage of increments and also setting aside the orders of the respondents 1 and 2 by this Court. It is further stated that when the petitioner was transferred, he did not report for duty, but applied for leave on medical grounds and though the leave was not sanctioned, he absented himself from the duty without handing over the charge of his post. Therefore, the petitioner was issued charge memo for disobeying the orders and for unauthorized absence and after receipt of the explanation, punishment of stoppage of increments was ordered. As per the orders of this Court in W.P.No.23322/2001, the increments of the petitioner were released with effect from 23-12-1999/01-12-1999,

23-12-2000/01-12-2000, 23-12-2001/01-12-2001 and

23-12-2002/01-12-2002 and the petitioner was also considered for promotion as Deputy Secretary/Administrative officer, vide proceedings, dated 26-03-2003. It is further stated that the Board Promotion Committee has passed over his name from the panel of names for promotion due to past punishments at that time. Since this Court has set aside the orders of punishment on the ground of non observance of procedure as per rules before imposing the punishment, but not after examining the merits of the case, it has since been decided now to conduct enquiry on the irregularities referred to in the charge memos and the explanation submitted by the individual and accordingly Sri Mir Aijaz Ali, Special Officer (Urdu), BIE is ordered to conduct a detailed enquiry as per rules. The petitioner's request for promotion on par with the 3rd respondent with effect from 02-04-2002 would be taken up after finalization of the disciplinary proceedings. It is further stated that the petitioner was posted as Administrative Officer in the Office of the Regional Inspection Officer, BIE, Ranga Reddy District vide proceedings dated

19-04-2003 duly modifying the orders issued earlier on

26-03-2003. Therefore, the 1st respondent sought for dismissal of the writ petition.

The learned counsel for the petitioner contended that the 3rd respondent was given promotion by virtue of orders of this Court and in the seniority list the 3rd

respondent was junior to the writ petitioner and therefore, the petitioner is entitled for promotion as in the case of the 3rd respondent from which he was promoted as Deputy Secretary. Insofar as transfer and release of increments are concerned, the learned counsel brought to the notice of this Court that they have been complied with.

The learned Standing Counsel for the 1st respondent contended that the Board Promotion Committee did not consider the case of the petitioner for promotion due to past punishments at that time and therefore, now the Board has decided to conduct a detailed enquiry as per the rules. Hence the petitioner is not entitled for any promotion.

The issue that has to be decided in this writ petition is only with regard to promotion to the post of Deputy Secretary by giving retrospective promotion from the date on which the 3rd respondent was promoted. The 3rd respondent was given promotion as Deputy Secretary on 02-04-2002 basing on the recommendations of the Board Promotion Committee. Even that temporary promotion to the 3rd respondent is subject to result of pending writ petition in the High Court. Admittedly, the petitioner was given punishment of stoppage of three increments with cumulative effect by an order, dated 06-06-2000. Challenging the said order, W.P.No.23322/2001 was filed before this Court. This Court allowed the writ petition by order, dated 04-02-2003, on the ground that the disciplinary authority order does not contain reasons. Admittedly, the petitioner retired from service on 30-11-2003. At the time of giving promotion to the 3rd respondent, the petitioner was suffering with punishment. Perhaps that is the reason, the Board Promotion Committee did not consider his name for inclusion in the panel for promotion. As the petitioner was suffering with punishment at the time of recommending the name of the 3rd respondent, it is a bar for promotion. The petitioner has turned down and says that since the punishment imposed has been set aside by this Court, he is eligible for promotion. He cannot claim promotion on par with the 3rd respondent in view of the fact that the respondents are also contemplating to take disciplinary action as per rules.

In the above circumstances, the writ petition is devoid of merits and

accordingly, it is dismissed. No costs.

17-08-2005.

Hsd